UNITED NATIONS

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/720
21 November 1995

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 720

Case No. 800: KRASNOV

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Jerome Ackerman, President; Mr. Francis Spain; Mr. Mayer Gabay;

Whereas, on 15 July 1994, Guennadi A. Krasnov, a former staff member of the United Nations Conference on Trade and Development, hereinafter referred to as UNCTAD, filed an application containing, inter alia, the following pleas, requesting the Tribunal:

"(a) To order the rescinding of the decision of the Secretary-General of 30th December 1992 to terminate the Applicant's services with effect from 31 March 1993;

(b) To order the Secretary-General to extend the Applicant's contract at the level of D-2 in the UNCTAD Secretariat at least until the age of his statutory retirement, i.e. March 1997, with compensation for the period between 31 March 1993 and the date of restoration of the appointment;

(c) Or, alternatively, to order that the Applicant be paid financial compensation equivalent to his D-2 salary and related allowances from 31 March 1993 until the age of his statutory retirement, that is March 1997, as well as the amount, equivalent to the loss of pension rights for the same period."

Whereas the Respondent filed his answer on 2 March 1995;

Whereas the Applicant filed written observations on 21 April 1995;

Whereas the facts in the case are as follows:

The Applicant, a national of the former Union of Soviet Socialist Republics (USSR), entered the service of UNCTAD on 19 November 1972, on a two-year fixed-term appointment, as an External Relations Officer, at the P-4, step III level. The Applicant's appointment was subject to the special condition that he was on secondment from the Government of the USSR. The Applicant's appointment was extended until 30 November 1978. On 1 April 1976, the Applicant was promoted to the P-5 level, as Chief, External Relations Section. The Applicant resigned with effect from 15 August 1978. On 4 September 1983, the Applicant re-entered the service of UNCTAD on a two-year fixed-term appointment, at the D-2 level, as Director, Division for Trade with Socialist Countries, again on secondment from the Government of the USSR. The Applicant's fixed-term appointment, on secondment, was subsequently extended six times, through 31 March 1993, when he separated from service.

In a memorandum to UNCTAD staff members, dated 20 May 1988, the Secretary-General of UNCTAD described the re-organization of the UNCTAD Secretariat. The Division the Applicant headed was abolished and he was temporarily re-assigned as Director/Associate Coordinator of the International Trade Programmes of UNCTAD. The twelve other staff members serving in his division were also temporarily re-assigned to other units of the UNCTAD Secretariat. At its 46th Session in 1991, the General Assembly, in its resolution 46/185 C, IX, section 15, decided that the thirteen redeployed posts should be temporarily retained for 1992.

In a facsimile dated 19 August 1992, the Secretary-General of UNCTAD recommended to the Assistant-Secretary-General for Human Resources Management that the Applicant's appointment, which was to

expire on 4 September 1992, should be extended through 31 December 1992, pending the General Assembly's consideration of the staffing and structure of UNCTAD. On 1 October 1992, the Assistant-Secretary-General for Human Resources Management approved the extension. In a memorandum dated 14 October 1992, the Secretary-General of UNCTAD informed UNCTAD staff of the decision to proceed with a reorganization of the UNCTAD Secretariat. The memorandum described the new arrangements and included a list of staff deployment, which contained the Applicant's name. Subsequently, the Applicant was granted a final extension of his appointment for three months, through 31 March 1993.

On 1 February 1993, the Applicant requested the Secretary-General of the United Nations to review this administrative decision. On 9 March 1993, the Director of Personnel informed the Applicant as follows:

> "As you are aware, reform of the economic and social sectors of the Secretariat is currently under way and in light of pertinent programmatic, financial and personnel considerations, as well as the decisions taken by the Fifth Committee, the Secretary-General has decided that you be granted a final three-month extension of your fixed-term appointment through 31 March 1993.
>
> This decision of the Secretary-General does not imply in any way dissatisfaction with your performance as your record of service with UNCTAD is noteworthy. As you are aware, the fixed-term appointment does not carry any expectancy of renewal in the Secretariat of the United Nations. I regret, therefore, to inform you that the decision of the Secretary-General is maintained."

On 26 March 1993, the Applicant lodged an appeal with the Joint Appeals Board (JAB) against this decision. He also requested a suspension of action on the contested decision pursuant to staff rule 111.2 (f).

The JAB, in a report dated 31 March 1993 on the request for suspension, recommended that the decision not to extend the

Applicant's contract beyond 31 March 1993 be suspended for a period of two months as of 1 April 1993. That recommendation was rejected by the Secretary-General.

On 27 April 1994, the JAB adopted its report on the merits of the case. Its conclusions and recommendation read as follows:

> "37. The Panel concludes that the surrounding circumstances and facts cannot be held as having created a legitimate expectancy of renewal of the Appellant's fixed-term appointment.
>
> 38. The Panel further concludes that there is no evidence to indicate that the decision of non-renewal of the Appellant's fixed-term appointment was motivated by prejudice, abuse of power or extraneous factors.
>
> 39. The Panel finally concludes that the consideration of the Appellant for a permanent appointment in 1988 is not relevant to the present appeal.
>
> 40. In view of the foregoing, the Panel makes no recommendation in support of this appeal."

On 12 May 1994, the Under-Secretary-General for Administration and Management transmitted to the Applicant a copy of the JAB report and advised him as follows:

> "The Secretary-General has examined your case in the light of the Board's report. He has taken note of the Board's conclusions that you did not have a legitimate expectancy of renewal of your appointment, that there was no evidence to indicate that the decision of non-renewal was motivated by prejudice, abuse of power or extraneous factors, and that the consideration of a permanent appointment for you in 1988 was not relevant to the present appeal. The Secretary-General has also taken note of the Board's determination to make no recommendation in support of your appeal, and, accordingly, has decided to maintain the decision and take no further action in respect of your case."

On 15 July 1994, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The decision not to renew the Applicant's fixed-term appointment beyond 31 March 1993 was taken in a discriminatory manner and caused damage to his reputation and career prospects, inside and outside the United Nations.

2. The Applicant had a legitimate expectancy of renewal of his fixed-term appointment.

3. The Applicant is entitled to a permanent appointment.

4. The Respondent's decision dramatically affected the Applicant's pension benefits and his employment opportunities.

5. The Applicant cannot be held responsible for his "secondment status".

Whereas the Respondent's principal contentions are:

1. The Applicant was employed pursuant to a fixed-term appointment which carried no expectancy of renewal and which expired on its own terms.

2. The Applicant has adduced no evidence of discrimination or bad faith in the decision not to renew his appointment.

3. The Applicant has failed to establish any basis for his claim that he had a "legitimate expectancy" of the renewal of his fixed-term appointment.

4. The consideration of the Applicant for a permanent appointment in 1988 is not an issue in this case. In any event, it is time-barred.

The Tribunal, having deliberated from 2 to 21 November 1995, now pronounces the following judgement:

I. This is an appeal from a decision of the Respondent dated 12 May 1994, based on a unanimous Joint Appeals Board (JAB) recommendation dated 27 April 1994. The JAB concluded, contrary to

the Applicant's contention, that he did not have a legitimate expectancy of renewal of his fixed-term appointment. Furthermore, the JAB found no evidence that the decision not to renew the Applicant's fixed-term appointment was motivated by prejudice, abuse of power or extraneous factors. Finally, the JAB concluded that whether the Applicant should have been considered for a permanent appointment in 1988 was not relevant to the appeal.

II. The Applicant asks that the decision of the Secretary-General, extending his fixed-term appointment to 31 March 1993, be rescinded. He further requests that his appointment be extended at the D-2 level, at least until his retirement age in March 1997, with compensation for the period between 31 March 1993 and the date of his reinstatement. In the alternative, the Applicant asks that the Respondent be ordered to pay him an amount equivalent to his D-2 salary and related allowances from 31 March 1993 until he reaches retirement age in March 1997, as well as an amount equivalent to the loss of pension rights for the same period. The Tribunal declines to call the former Secretary-General of UNCTAD as a witness, as requested by the Applicant, or to hold an oral hearing, as the file is adequate for decision of the case.

III. In support of his pleas, the Applicant contends that he had a legal expectancy of the continuation of his appointment until retirement age. He argues that the Respondent's action in permitting his fixed-term appointment to expire was wrongful. He says that he should have been, but was not, considered for a career appointment long before his fixed-term appointment expired.

IV. Following a series of two or three-year fixed-term appointments beginning in 1972, with an interruption between 1978 and 1983, the Applicant was serving on a fixed-term appointment scheduled to expire on 3 September 1992. At that time, UNCTAD was

in a process of reorganization of its activities. On 1 October 1992, UNCTAD obtained approval of an extension of the Applicant's appointment through 31 December 1992, while awaiting action by the General Assembly on its proposals for reorganization in 1993. The General Assembly subsequently received a proposal from the Respondent to extend the temporary posts (including the one encumbered by the Applicant) through 1993, on a temporary basis. On 14 October 1992, the Secretary-General of UNCTAD notified the staff of his proposed organizational arrangements in the UNCTAD Secretariat, pointing out that they "must ... be regarded as subject to change." The memorandum listed all UNCTAD staff, including the Applicant.

V. On 30 December 1992, UN Headquarters informed the Secretary-General of UNCTAD that the Respondent had approved certain recommendations "in the light of pertinent programmatic, financial and personnel considerations." Included among the recommendations was one relating to the Applicant which stated: "In the absence of appropriations for the UNCTAD posts attached to the former UNCTAD subprogramme on trade among countries having different economic and social systems, and in view of the overall post situation at the D-2 level and developments concerning the restructuring of the economic and social sectors of the Organization, [the Applicant] is to be granted a final three-month extension through 31 March 1993." The subsequent implementation of this decision led to the Applicant's appeal.

VI. The Tribunal concurs in the views expressed by the JAB with regard to the non-existence of any legal expectancy by the Applicant concerning a further appointment. As the Tribunal held in Judgement No. 559, Vitkovski and Rylkov paragraphs XI and XII (1992), such an expectancy may be found only in exceptional circumstances giving rise to a legal entitlement to a further contract, and the failure

to offer one engages the responsibility of the Organization. The Tribunal, like the JAB, does not consider that the facts in this case warrant a determination that a legal expectancy existed. The Applicant's description of his record with UNCTAD and his reference to the memorandum of the Secretary-General of UNCTAD, dated 14 October 1992, fall far short of establishing a legal expectancy, particularly since the latter warned that the arrangements set forth in it were subject to change.

VII. The Applicant also contends that it was improper for his appointment not to be extended when the General Assembly approved, for 1993, continuation of certain temporary posts, including the one that he encumbered. However, the Tribunal notes that the reasons for non-extension given to the Applicant in a letter dated 9 March 1993, from the Director of Personnel, were broader in scope than the issue of whether the particular post he was encumbering was being continued for 1993. The reasons were plainly within the discretionary authority of the Respondent as to reform and reorganization of the economic and social sectors of the Secretariat. There is no evidence at all that the decision not to extend the Applicant's appointment was based on any unlawful hostility directed toward him or that it was improperly influenced in any way. Indeed, the Applicant appears to have been treated with consideration and respect in the last two extensions he received and in the tenor of communications to him. In the view of the Tribunal, the decision of which he complains was based entirely on lawful management considerations.

VIII. With respect to the Applicant's argument that he should have been considered for a permanent appointment in 1988, the Tribunal also concurs with the JAB's view that this is not germane to the present appeal. As the Tribunal noted in Judgement No. 559, supra, paragraph X, if the Applicant had wished to challenge the secondment

practices of his Government and the foreclosure by the Organization of his possibilities for a career appointment under General Assembly resolution 37/126, he should have done so in a timely fashion. He did not. That being the case, he was not free to raise the issue in 1992 or 1993 in connection with the decision against the extension of his fixed-term appointment. The Tribunal notes, parenthetically, that, in contrast to other applicants who have complained about secondment practices and their effect on career appointments or extensions of fixed-term appointments, in this case, the Applicant's efforts for a further extension of his appointment had the strong support of his Government, as shown by letters, dated 5 January 1993 and 12 March 1993, to the Secretary-General of UNCTAD from the Permanent Representative of the Russian Federation.

IX. For the foregoing reasons, the application is rejected.

(Signatures)

Jerome ACKERMAN
President

Francis SPAIN
Member

Mayer GABAY
Member

New York, 21 November 1995

R. Maria VICIEN-MILBURN
Executive Secretary